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Tyler Przybylek
Proc. II

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-186481

DATE: November 12, 1976

MATTER OF: DWC Leasing Company

DIGEST:

Claim for bid preparation costs filed by party whose protest was not resolved by General Accounting Office because of protester's failure to file required submissions timely will not be considered since to do so would in effect allow protester to circumvent Bid Protest Procedures.

On September 24, 1976, counsel for DWC Leasing Company (DWC) filed a claim for bid preparation costs predicated on alleged improper conduct by the General Services Administration (GSA) in awarding a lease in connection with the Solar Energy Project at Williams, Arizona.

This same alleged agency misconduct was the subject of a protest filed with our Office by DWC on May 10, 1976. That protest was not resolved because DWC failed to provide supplemental information which it indicated would be provided in accordance with our Bid Protest Procedures, 4 C.F.R. § 20.2(d)(1976), and the terms of an extension of time granted to permit DWC to obtain certain information from GSA under the Freedom of Information Act. Our file on this matter was closed on August 17, 1976, without our having considered the merits of the DWC protest. Consequently, no determination was made regarding the propriety of GSA's conduct.

In order to consider DWC's claim for bid preparation costs at this time it would be necessary for this Office to consider the merits of allegations which DWC raised initially in its protest. DWC, however, as noted above, did not choose to pursue that protest through to a decision on the merits. Under these circumstances, we do not consider it appropriate for this Office to consider a claim from DWC for bid preparation costs.

Our Bid Protest Procedures are intended to provide a fast, efficient, vehicle for the resolution of contract formation disputes. Normally, claims filed with this Office for bid preparation costs are decided in connection with a protest and based on the record

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established in that protest. See, e.g., T & H Company, 54 Comp. Gen. 1021 (1975), 75-1 CPD 345; DOT Systems, Inc., B-183697, June 11, 1976, 76-1 CPD 368. In this case there is no record because DWC failed to pursue its protest in a timely manner. To allow DWC to now file a claim for bid preparation costs would have the effect of undermining our Bid Protest Procedures, since it would enable a party whose protest is dismissed for failure to comply with our timeliness requirements to circumvent those requirements by raising anew the previously stated allegations in the context of a claim. Accordingly, to preserve the integrity of the Bid Protest Procedures, this Office will not consider a claim for bid preparation costs from a party whose protest was not resolved because of the protester's failure to file required submissions timely.

We point out that our refusal to consider this claim does not leave DWC without a remedy. Claims against the United States for bid preparation costs are considered by the United States Court of Claims and District Courts. See, for example, The McCarty Corporation v. United States, 499 F.2d 633 (Ct. Cl. 1974) and Armstrong & Armstrong Inc. v. United States, 356 F. Supp 514 (E.D. Wash. 1973), affirmed 514 F.2d 402 (9th Cir. 1975).

In accordance with the above, the claim of DWC Leasing will not be considered.

Deputy

R. F. Kottman
Comptroller General
of the United States